

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MM Docket No. 99-25
)	
Amendment of Service and Eligibility Rules)	MB Docket No. 07-172
For FM Broadcast Translator Stations)	RM-11338

Directed to: Office of the Secretary
Attention: The Commission

REPLY TO OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Hope Christian Church of Marlton, Inc. (“Hope”), Bridgelight, LLC (“Bridgelight”), and Calvary Chapel of the Finger Lakes, Inc. (“CCFL”) (together, the “Joint Parties”), by their attorneys, hereby respectfully submit this Reply to the “Opposition to Petitions for Reconsideration of Prometheus Radio Project” (the “Prometheus Opposition”), filed June 15, 2012, with regard to the *Fourth Report and Order and Third Order on Reconsideration*, FCC 12-29, released March 19, 2012, in the above-captioned proceeding (the “*Fourth Report and Order*”). With respect thereto, the following is stated:

In their Petition for Partial Reconsideration (the “Petition”), the Joint Parties showed that adopting a limited waiver policy with regard to the Commission’s one-to-a-market limit on FM translator applications would better serve the public interest than a rigid application of the limit. While the Commission identified the concerns which led to the limit--LPFM preclusion, speculation and trafficking--the waiver conditions outlined in the Petition address these concerns, thereby opening a way to grant of more than one application per market provided the waiver standards are met.

In opposition, Prometheus has adopted the oft-used but invalid method of misstating the Joint Parties' position and then arguing against that misstated position. The Prometheus Opposition states that the Joint Parties have argued that "the one-to-a-market limit must be eliminated...." Prometheus Opposition at 5. Such is not the case. As set forth in the their Petition, the Joint Parties are urging adoption of a limited waiver policy as an alternative to the arbitrary one-to-a-market market limitation. The one-to-a-market limitation goes far beyond what is required to promote the public interest goals articulated by the FCC in support of its one-to-a-market policy.

All of the talk in the Prometheus Opposition about the need for the one-to-a market cap to advance LPFM applications is irrelevant to the Joint Parties' points. Pursuant to the Joint Parties' suggested waiver standard, one of the required showings to qualify for a waiver would be lack of LPFM preclusion. *See* Petition at 8. However, once all LPFM-precluding translator applications are dismissed in a market, the same number of LPFM opportunities would be available with or without the grant of a waiver. Surely, Prometheus is not asserting such moral superiority for LPFM that everyone else must stand aside--even where grant of a translator application would have no impact on future LPFM use of the spectrum. The Local Community Radio Act of 2010¹ belies this attitude of superiority. In the LCRA, Congress stated its intent that LPFM and FM translators be treated as equals, as both provide valuable service to the public. In any event, a waiver standard which expressly requires *no LPFM preclusion* would, by definition, have *no* adverse impact on Prometheus's constituents.

In addition, the Joint Parties' proposed waiver approach would remove any potential Commission concern about trafficking and speculation. As set forth in the Petition, there are many valid reasons for an applicant to have filed multiple applications in a market, and there is

¹ Pub. L. No. 111-371, 124 Stat.4072 (2011) (the "LCRA")

no evidence that a large number of such multiple-application filers are speculators. Prometheus has argued that “[n]ot every applicant need be a speculator in order for the Commission to implement a policy designed to prevent harmful speculation...” Prometheus Opposition at 7. True, but neither is it good public policy to go after a perceived problem with a sledgehammer. While the relatively small number of traffickers and speculators may be eradicated using the FCC’s “dismiss-most” approach, the collateral damage is immense and unnecessary. For instance, none of the Joint Parties are speculators; they are only local broadcasters legitimately trying to expand service to their regions. Yet they face dismissal of nearly all of their pending applications as a result of the one-to-a-market policy. Such dismissals, as shown herein, will not make room for more LPFM stations (because opportunities for LPFM applications, by definition, would not exist), and application abuses can be addressed through the suggested waiver standards. It is the rigidity of the Commission’s policy, not speculation and trafficking, that is the greatest threat to the public interest here. However, if Commission were to allow limited waivers with restrictions that would discourage speculation, such as the required holding period proposed by the Joint Parties, the benefits of eliminating speculation would be realized, and the damage caused by an overly broad dismissal policy would be lessened. This is the fair approach and Prometheus has not shown otherwise.

The Prometheus Opposition argues that a waiver policy would somehow decrease market diversity, but this argument is specious, as it ignores the diversity benefits which FM translators offer. It is beyond dispute that the addition of a new LPFM station would add one new voice to the market. However, an LPFM station can convey the benefits of its additional voice only to those listeners who can hear its programming, in other words, listeners within its limited service area. An FM translator will likewise add a new voice in its service area. Several interconnected

translators could serve a much larger area. From the point of view of the individual listener, it does not matter whether that voice originates at the far side of a geographically large market; if the listener cannot hear the programming, that programming cannot inform the listener's consideration of public issues. Thus, FM translators can bring one or more additional voices to their often larger service areas and thereby contribute to the diversity of programming in a larger area than a single LPFM can serve. Since the suggested waiver standard specifies that FM translator applications may not have overlapping predicted contours, that restriction ensures that co-owned translators will not have duplicative coverage areas. Thus, each translator provides a unique service at least within its service area, thereby adding to the diversity of programming within that service area. When there are several interconnected translators in the market, a potentially larger area and population would receive a service unique to the market. The FCC's one-to-a-market policy, needlessly sacrifices this potential by forcing the dismissal of translator applications that, when the waiver standards are applied, would not run counter to any stated rationale for the policy.

Prometheus blithely asserts that the one-to-a-market limitation, in combination with the national cap of 50 applications, is "designed to preserve diversity in local markets without unreasonably burdening single entities that may reasonably serve a number of local communities nationwide." Prometheus Opposition at 7-8. Although the concept of having a widespread network of individual translators throughout the nation is a perfectly valid business model, it is not the only one. For example, a particular licensee (*e.g.*, each of the Joint Petitioners) may seek to concentrate on serving one region with programming choices tailored to that region. If, however, the region includes one or two large markets, then, without a waiver policy, the licensee is precluded from following that model. The waiver policy advanced by the Joint

Parties, on the other hand, not only preserves local diversity as outlined above, but also promotes the Commission's goal of localism. Accordingly, adoption of the Joint Parties' waiver policy would better advance the public interest than does the mindlessly-strict limitation Prometheus favors.

Even the Prometheus Opposition recognizes, however, that allowing certain waivers "would not be inconsistent with the public interest if [they] were carefully restricted, applied sparingly, and did not delay the issuance of LPFM licenses." Prometheus Opposition at 10. It is just such a waiver policy that the Joint Parties have advanced. The proposed waiver standards are designed to address all of the Commission's stated concerns, including speculation, trafficking, and LPFM preclusion. As for delays in the grants of LPFM applications, the criteria identified by the Joint Parties are factual in nature, and their application should cause only a small, incremental delay at worst. Parties interested in LPFM opportunities have been waiting for 11 years for a window,² and inevitably there still will be further delays in processing. When measured against an 11-year delay, a few more months makes no material difference. Moreover, administrative convenience, a legitimate concern to the FCC, is not mentioned in the LCRA as a basis for deciding licensing priorities between competing services. After the already 11-year wait, it is far better to take a little additional time to tailor a correct and friendlier approach to LPFM and translator spectrum rights.

While Prometheus speaks casually of applications that may be filed in the next FM translator window, the Commission's staff acknowledged at the Low Power FM and FM Translator Public Forum held on May 16, 2012, that any such window would be years away. Thus, translator applications unnecessarily dismissed result in lost opportunities for both the public and the licensee for a period of many years. The Commission's duty to serve the public

² The last LPFM filing window was in 2001. See *Fourth Report and Order*, para. 2.

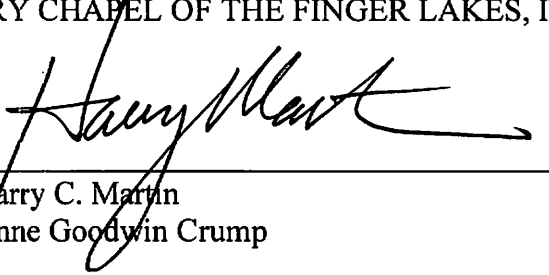
interest requires it to avoid such a result whenever possible. The Joint Parties' waiver standards provide the Commission with an opportunity to preserve FM translator as well as LPFM opportunities, discourage abuse of the Commission's processes, and to promote localism as well as diversity in local markets. Accordingly, the waiver policy should be adopted.

WHEREFORE, the premises considered, the Joint Parties respectfully request that the Commission reconsider its cap of one translator application per market, and adopt the policy for waiver of that cap described in the Petition.

Respectfully submitted,

HOPE CHRISTIAN CHURCH OF MARLTON, INC.
BRIDGELIGHT, LLC, AND
CALVARY CHAPEL OF THE FINGER LAKES, INC.

By: _____


Harry C. Martin
Anne Goodwin Crump

Their Attorneys

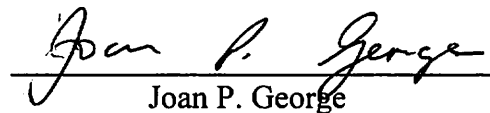
Fletcher Heald & Hildreth, PLC
1300 North 17th Street – 11th Floor
Arlington, Virginia 22209
(703) 812-0400

June 25, 2012

CERTIFICATE OF SERVICE

I, Joan P. George, a secretary with the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that I caused copies of the foregoing "Reply to Opposition to Petition for Partial Reconsideration" to be placed in the U.S. mail, first class postage prepaid, on this 25th day of June, 2012, addressed to the following:

Laura M. Moy, Esquire
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Suite 312
Washington, D.C. 20001


Joan P. George